

Dr Mary Dobbs, Senior Lecturer, Maynooth University and Dr Ludivine Petetin, Lecturer in Law, Cardiff University - Written evidence (EEH0038)

This evidence is written by Dr Mary Dobbs from Maynooth University and Dr Ludivine Petetin from Cardiff University. Ludivine Petetin and Mary Dobbs are respectively Senior Lecturer and Lecturer in Law with expertise in agri-environmental issues and are currently writing a book on Brexit and Agriculture. Both have and are engaging with stakeholders across the UK on the impact of Brexit. They both are associates of the Brexit & Environment network, which brings together academics analysing how Brexit is affecting the UK and EU environments.

We are responding primarily in relation to: environment; food trade and agriculture. It also addresses to a more limited extent: health and chemicals.

Environment per se:

1. The TCA does little to address environmental issues. Whilst there are provisions on cooperation and shared ambitions regarding climate change, electricity, animal welfare, organic production, sustainability etc, there is little substantive or easily enforceable content on the environment.
2. The main provision relates to 'non-regression'. This is an admirable and valuable principle to include in an EU-UK Agreement. However, the provision is limited in scope and difficult to enforce in practice. Firstly, it only relates to non-regression and does not bind the parties to continued improvement - environmental provisions can stagnate easily and there is likely to be divergence in future, which also makes cooperation on cross-border matters more challenging. Secondly, the regulatory baseline set at the end of 2020 can be modified since the standards per se are not set-in stone and therefore both the UK and the EU can diverge from such standards. Thirdly, the non-regression principle is found within the section of the TCA that addresses trade and level-playing fields. As noted by Greener UK,¹ it only applies where non-regression would have impacts on trade or investment, rather than more broadly. Finally, this reliance on impacts on trade or investment, plus the broad idea of 'non-regression' rather than specific obligations to comply with precise provisions, makes it much more difficult to enforce than obligations under EU environmental law.
3. Efforts should be made to take a broad-sweeping approach to the non-regression principle and respect this in practice as much as

¹ https://greeneruk.org/sites/default/files/download/2020-12/GreenerUK_initial_analysis_of_the_EU-UK_deal.pdf.

possible, as well as cooperating more generally regarding climate change, sustainability etc.

4. Longer-term, it would be desirable to extend the non-regression principle beyond trade and also adopt a dynamic alignment principle or environmental improvement principle. Agreements on abiding by specific legislation or shared standards would also help.

Food trade & agriculture (encompassing environmental, health and SPS issues):

5. This section largely entails a brief contribution that we undertook for a report for UK in a Changing Europe that is being published shortly. The contribution focuses on environmental, health and sanitary and phytosanitary issues – especially those raised in the context of agri-food production and trade.
6. Overall, the TCA helps address some of the more severe and blunter impacts of Brexit,² e.g. through ensuring that no tariffs or quotas will be introduced (at least initially) between the EU and the UK/GB. It is also complemented by the NI Protocol and the EU/UK Joint Committee's progress on the implementation of the Protocol, e.g. in applying grace periods for specific products and in providing flexibility in determining whether goods are 'at risk' or not of being transported from GB via NI into the EU.
7. However, from a trade perspective numerous issues remain that pose obstacles, e.g. the approach to VAT, haulier licences, customs formalities, and SPS controls. On this front, the following is from our contribution to the UKICE report:

"Agriculture: environmental, food and animal health standards

Mary Dobbs and Ludivine Petetin

Although its departure from the EU creates opportunities for the UK and devolved administrations to design tailored and future-oriented agricultural policies, it also raises key questions concerning devolution, standards, funding, trade deals, market access, and administrative resources. The end of the UK's membership of the EU and the UK government's response to these challenges are likely to have far-reaching impact. Many of the likely effects were raised in debates on the [Agriculture Act 2020](#), the [Internal Market Act 2020](#) and the [Trade Bill 2020](#).

Hardening borders

As the trade relationship between the UK and the EU is being re-written, so are border customs, checks and inspections. In early 2020, the UK Government [finally acknowledged](#) that UK-EU 'frictionless trade' would not materialise, and that customs checks would take place at UK borders. This

² E.g. <https://home.kpmg/ie/en/home/insights/2021/01/brexit-deal-agreed-the-trade-and-cooperation-agreement.html>

has indeed materialised in the UK/EU Trade and Cooperation Agreement (TCA) and is clearly visible in the European Commission checklist on the differences between EU membership and the scope of the TCA. Although customs formalities are themselves an imposition when none previously were in place, non-tariff barriers are arguably even more problematic. As well as submitting customs declarations, hauliers and commercial drivers will face multiple administrative burdens at the border. For instance, they will have to produce security declarations, as well as appropriate permits and licenses (see chapter on road haulage, this volume). We are already seeing the consequences of inadequate paperwork for hauliers travelling from Great Britain (GB) into Ireland, with a small proportion of lorries turned away from ferries.

Although the Northern Ireland Protocol excludes checks from Northern Ireland (NI) into the EU, checks will take place for goods travelling from GB into NI and from GB into EU in accordance with the UK's status as a third country. In particular, there will be reinforced biosecurity checks and inspections on agricultural products, including live animal, plants, food and feed, to comply with SPS measures intended to prevent the spread of diseases and pests.

Checks and inspections for live animals and animal products are carried out at designated border check posts (BCPs), which will consequently be required between GB and NI and between GB and the EU. However, firstly, whilst the UK Government and the NI civil service have undertaken considerable efforts (despite the NI Minister's strong reluctance), through building infrastructure at NI ports, recruiting and training staff, and generally enhancing logistics, these simply remain insufficient. This will lead to significant bottlenecks. Secondly, although there is now enhanced capacity at BCPs along the GB/EU border in the EU (and planned in the UK), there is still no BCP at ports or airports in Wales, which has implications for trade with Ireland, especially in relation to Irish beef imports. Until such capacity is in place, trade will have to be re-routed through other entry points around the country, which raises concerns about the ability of other ports and BCPs to cope, and the impact on the Welsh economy.

Whether between GB and the EU or going from GB into NI, intensified administrative procedures, checks and inspections will lengthen the time spent at the border dramatically. As a result, the costs of transportation (e.g. driver time) and insurance will rise, the distress to the live animals being transported will increase, and the perishability of products will be impacted. The repercussions will be felt across the agri-food supply chain. Additional costs will inevitably be passed on to consumers in the UK and the EU, especially in sectors with very low profit margins, as supply chains become more complex. Therefore, GB products in the EU and EU products in GB are likely to become less competitive. The same could occur for NI products in GB and for GB products in NI. Small changes in the agri-food supply chain can have a major domino effect. According to a 2020 LSE report, when importing into the EU, compliance with rules of origin checks could cost around 8% of the value of the good, with 85% of that figure

due to the increased paperwork, and import declarations alone could amount to an extra £4 billion a year to UK and EU traders.

It is also worth noting that some suppliers may not have the logistical abilities to meet these new hurdles and others may simply decide it is not financially worthwhile, e.g. in particular with GB suppliers no longer supplying to NI or to the EU. This to-date includes garden centres where requirements of individual plant 'passports' have led to decisions not to continue supplying. This has considerable knock-on effects for both downstream producers and consumers, forced to source goods elsewhere or go without. It is also seen in the context of grocers, where it has been suggested that export health certificates from GB to NI or to the EU could cost an extra £40,000 for every shipment of animal products.

Agri-food policies and imports/exports responsibilities will be generally be shared across the Department for Environment, Food and Rural Affairs (Defra), the Food Standard Agency (FSA), the Agriculture/Rural Affairs Departments in the devolved administrations, Animal and Plant Health Agency and Border Force. The FSA for Wales, Northern Ireland and England and Food Standards Scotland will be the main regulatory bodies handling food imports. To cope with the incoming responsibilities, the capacity of the FSA has been increased with the risk assessors doubling since 2017, the ability to draw expertise from 100 scientific experts and support staff and the recruitment of 35 additional members to its advisory committees.

The UK (effectively GB) is no longer part of TRACES. TRACES is the European Commission's online system that requires sanitary and phytosanitary certification, pre-notification and tracking (importation, exportation and intra-EU trade) of most agri-food products. **Imports into NI must continue to be notified via TRACES due to the NI Protocol and GB products exported to the EU must comply with TRACES too.**

The UK system replacing TRACES is the 'Import of products, animals, food and feed system' (IPAFFS). Notification of imports of live animals (including Export Health Certificates (EHCs)) will be handled by the Animal and Plant Health Agency (APHA) for GB or the Department of Agriculture, Environment and Rural Affairs (DAERA) for NI. Health controls at sea and airports of imported food will be undertaken by the Association of Port Health Authorities who represents local authorities and Port Health Authorities. Audits will be carried out at BCPs by APHA in GB and the Food and Veterinary Office of the European Commission in NI. EU products exported to GB will have to comply with the IPAFFS requirements.

As such, SPS responsibilities and controls will largely remain spread over multiple agencies and departments – the approach has not been streamlined by Brexit. Arguably, it is even more difficult for businesses to trade (i) due to the costs attached to comply with the new IPAFFS system and (ii) due to the existence of two systems in the UK: one for GB with IPAFFS and one for NI with TRACES.

Driving standards – but where?

The impact of the UK's departure from the EU will affect several interlinked agricultural, environmental and food issues. EU regulatory frameworks, including standards, processes and governance mechanisms, which ensured a minimum level of protection, will no longer bind the UK since regulatory divergence is possible under the TCA for as long as obligations on the level playing field to achieve fair competition are fulfilled – unless they are provided for in international agreements, including the NI Protocol and any future relationship agreement (going beyond the TCA). As a result, the UK, including the devolved administrations in principle, has scope for choosing to diverge from EU SPS standards.

Despite an obligation of non-regression in environmental matters, a common objective to achieve net zero by 2050, and agreed cooperation on animal welfare, antimicrobial resistance and sustainable food systems, the UK can diverge from EU standards for as long as this will not negatively impact on trade. Further, neither the EU Withdrawal Act 2018 nor the TCA replicate the corresponding EU governance mechanisms. Despite efforts by the devolved administrations and also for instance within the UK Environment Bill, rules can be altered over time and their role is likely to be considerably weakened.

Divergence between markets can increase hurdles, resulting in restrictions or checks, internationally and nationally. This concern is reflected in the Internal Market Act 2020, which introduces UK principles of mutual recognition and non-discrimination that will now apply across Great Britain. Simply put, to facilitate trade, the introduction of new standards in one part of GB cannot prevent the use or sale of goods there that are authorised in another part of GB, even if standards differ. The UK Internal Market (and facilitating external trade deals) has been prioritised both over devolution and the potential to raise standards. Considering Scotland's stated intention (contrary to Westminster's position) to maintain alignment with EU standards in the future, including environmental and human health standards, not to mind their general protective stance on devolution, it is hardly surprising that Scottish politicians especially have responded in aghast to such proposals. It is worth noting that the Westminster Parliament rejected proposals by the House of Lords to extend the areas excluded from the market principles under Schedule 1 to cover proportionate measures to achieve legitimate aims - akin to the EU's approach. One relatively narrow but significant concession was adopted in light of Wales and Scotland positions: where common frameworks are adopted, these will be exempt from the market principles. However, this only applies to areas previously governed by EU law and where a Minister of the Crown is in agreement with at least one devolved administration, and is dependent on the Secretary of State making regulations to amend Schedule 1. This does not facilitate unilateral devolved actions to protect standards.

Concerns about standards have also been raised in relation to UK trade deals and especially food (though see chapter on food safety, this volume), where it has been feared that the UK might permit lower quality

imports or dilute rules on consumer information and protection, to facilitate trade deals. Although these changes could lower prices for consumers and importers, they would do so at the risk of quality, health, and choice. They could also potentially undermine domestic producers, who continue to adhere to existing standards. It is notable in this respect that the UK government has blocked efforts to protect standards in the Agriculture Act 2020 and Trade Bill.

Northern Ireland (NI), of course, occupies a very particular position. Even after the end of the transition period, NI remains bound by EU laws covering agricultural production, animal welfare and food standards. This was the solution agreed by the UK and the EU, and incorporated in the NI Protocol in the Withdrawal Agreement, to maintain an open border between NI and Ireland in compliance with the Belfast Agreement (the "Good Friday Agreement"), despite the UK's departure from the customs union and single market. Broader environmental issues are largely not covered by the Protocol, although there are a number of exceptions, including invasive species.

Conclusion

Overall, sanitary and phytosanitary issues, controls on imports/exports and internal standards are closely intertwined. How they will develop in future remains uncertain, but there is likely to be considerable disruption for all parties. Standards and governance mechanisms will likely diverge both within the UK and between the EU and the UK since the TCA has led to limited positive outcomes in these areas. In conjunction with the introduction of border controls between GB and the EU and to an extent between GB and NI, the divergence will lead to substantial delays at the frontier and costs for industry. It will also come with a cost to the public purse and is likely to result in higher prices for consumers."

8. As such, it can be concluded that the TCA delivers a *hard* Brexit from an environmental, agricultural and food perspective.

Mary Dobbs and Ludivine Petetin
February 2021